

**U.S. ENVIRONMENTAL  
PROTECTION AGENCY**

Fiscal Year 2013

Annual Report to Congress  
Pursuant to the  
Notification and Federal Employee  
Antidiscrimination and Retaliation  
Act of 2002

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## **I. EXECUTIVE SUMMARY**

The U.S. Environmental Protection Agency (EPA or Agency) provides its Annual Report to Congress as required by Section 203 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174. As required, this report includes information related to the number of cases in Federal court pending or resolved in fiscal year (FY) 2013 and, in connection with those cases, their disposition; reimbursement(s) to the Judgment Fund; and the number of employees disciplined and the nature of the disciplinary action taken.

During FY 2013, there were a total of 12 cases pending before Federal courts. Among these cases, there were 9 claims of violation of Title VII of the Civil Rights Act of 1964; 4 claims of violations of the Rehabilitation Act; 4 claims of violation of the Age Discrimination in Employment Act; one claim of violation of the Equal Pay Act, and one claim of violation of 5 USC 2302.

Of the 12 cases noted above, one was settled during the reporting period. The settlement involved a total payment of \$500, all of which was designated for the payment of attorney's fees. This settlement amount was reimbursed to the Judgment Fund.

Of the remaining 11 cases, 3 were dismissed with prejudice, 2 are currently pending decisions on dispositive motions, one is pending a decision before the U.S. Court of Appeals for the Third Circuit, one is under settlement negotiations, and the remaining cases are at the discovery stage in U.S. Federal District Courts.

## **II. BACKGROUND**

On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," or, as it is more commonly known, the No FEAR Act. One purpose of the Act is to "require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws." Public Law 107-174, Summary. In support of this purpose, Congress found that "agencies cannot be run effectively if those agencies practice or tolerate discrimination." Public Law 107-174, Title I, General Provisions, section 101(1).

Section 203 of the No FEAR Act requires that each Federal agency submit an annual Report to Congress not later than 180 days after the end of each fiscal year. Agencies must report on the number of Federal court cases pending or resolved in each fiscal year and arising under each of the respective areas of law specified in the Act in which discrimination or retaliation was alleged. In connection with those cases, agencies must report the status or disposition of the cases; the amount of money required to be reimbursed to the judgment fund; and the number of employees disciplined. Agencies must also report on any policies implemented related to appropriate disciplinary actions against a Federal employee who discriminated against any individual, or committed a prohibited personnel practice; any employees disciplined under such a policy for conduct inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws;

and an analysis of the data collected with respect to trends, causal analysis, and other information.

The Act imposes additional duties upon Federal agency employers intended to reinvigorate their longstanding obligation to provide a work environment free of discrimination and retaliation. The additional obligations contained in the No FEAR Act can be broken down into five categories:

- A Federal agency must reimburse the Judgment Fund for payments made to employees, former employees, or applicants for Federal employment because of actual or alleged violations of Federal employment discrimination laws, Federal whistleblower protection laws, and retaliation claims arising from the assertion of rights under those laws.
- An agency must provide annual notice to its employees, former employees, and applicants for Federal employment concerning the rights and remedies applicable to them under the employment discrimination and whistleblower protection laws.
- At least every two years, an agency must provide training to its employees, including managers, regarding the rights and remedies available under the employment discrimination and whistleblower protection laws.
- Quarterly, an agency must post on its public website summary statistical data pertaining to EEO complaints filed with the agency.

The President delegated responsibility to the Office of Personnel Management (OPM) for issuance of regulations governing implementation of Title II of the No FEAR Act. OPM published final regulations on the reimbursement provisions of the Act on May 10, 2006; final regulations to carry out the notification and training requirements of the Act were published on July 20, 2006; and the final regulations to implement the reporting and best practices provisions of the No FEAR Act on December 28, 2006. The Equal Employment Opportunity Commission (EEOC) published its final regulations to implement the posting requirements of Title III of the No FEAR Act on August 2, 2006. The EPA has prepared this report based on the provisions of the No FEAR Act in accordance with OPM and EEOC's final regulations.

### **III. DATA**

#### **a. Civil Cases**

Section 203(a)(1) of the No FEAR Act requires that agencies include in their Annual Report "the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged." Section 724.302 of OPM's final regulations on reporting and best practices clarifies section 203 (1) of the No FEAR Act stating that agencies report on the "number of cases in Federal Court [district and appellate] pending or resolved...arising under each of the respective provisions of the Federal Antidiscrimination laws and Whistleblower Protection Laws applicable to them...in which an employee, former Federal employee, or applicant alleged a violation(s) of these laws, separating data by the provision(s) of law involved."

During FY 2013, there were a total of 12 cases pending before Federal courts. Among these cases, there were 9 claims of violation of Title VII of the Civil Rights Act of 1964; 4 claims of violations of the Rehabilitation Act; 4 claims of violation of the Age Discrimination in Employment Act; one claim of violation of the Equal Pay Act, and one claim of violation of 5 USC 2302.

Of the 12 cases noted above, one was settled during the reporting period. The settlement involved a total payment of \$500, all of which was designated for the payment of attorney's fees. This settlement amount was reimbursed to the Judgment Fund.

Of the remaining 11 cases, 3 were dismissed with prejudice, 2 are currently pending decisions on dispositive motions, one is pending a decision before the U.S. Court of Appeals for the Third Circuit, one is under settlement negotiations, and the remaining cases are at the discovery stage in U.S. Federal District Courts.

#### **b. Reimbursement to the Judgment Fund**

During FY 2013, the Agency was required to reimburse the Judgment Fund \$500, all of which was designated for the payment of attorney's fees. This is \$174,500 less than the amount the Agency was required to reimburse to the Judgment Fund in FY 2012.

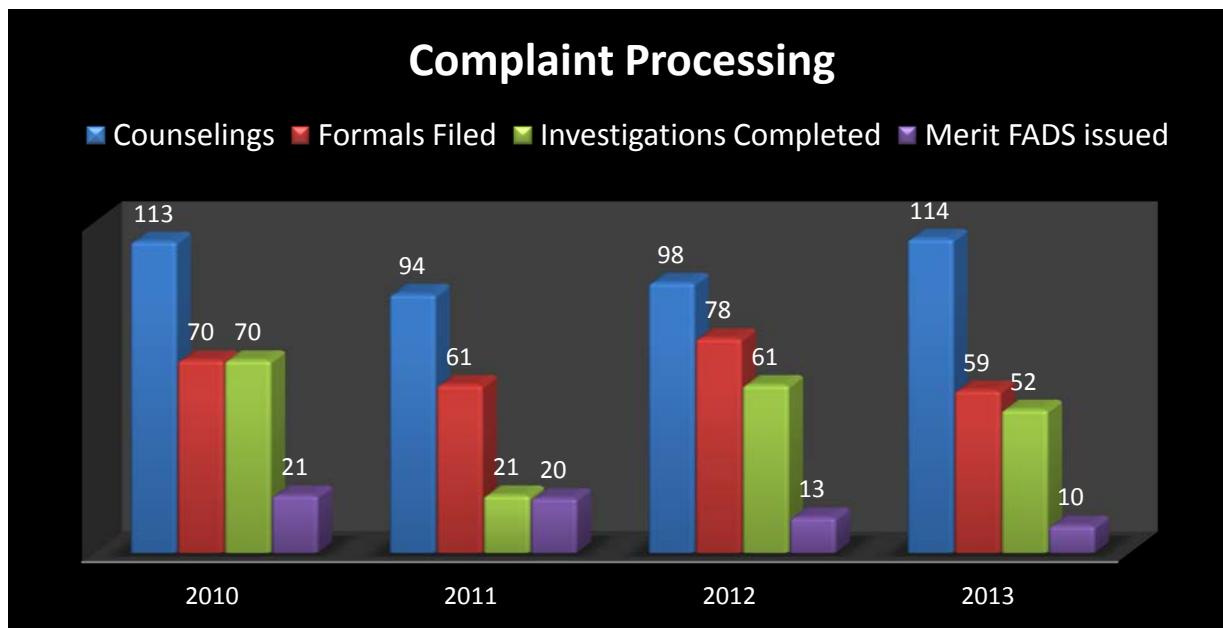
#### **c. Disciplinary Actions (5 C.F.R. § 724.302 (a)(3) & (5))**

There were no employees disciplined in FY 2013 in connection with any cases described in paragraph (a) above, or for any other conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes prohibited personnel practices.

#### **d. Final Year-End Data Posted Under Section 301(c)(1)(B)**

The final year-end data posted pursuant to section 301(c)(1)(B) of the No FEAR Act is included in Appendix 1.

The final year-end data indicates that during FY 2013, there was a 23% reduction in the number of formal complaints filed compared to FY 2012. In FY 2012, 76 formal complaints of discrimination were filed with the Agency. During FY 2013, there were only 59 new administrative complaints of discrimination filed by 56 employees or applicants for employment. Three Agency employees filed more than one complaint during the reporting period.



During FY 2013, EPA’s Office of Civil Rights (OCR) procedurally dismissed 7 complaints. The average time to process a dismissal was 147 days, a 31% reduction from the FY 2012 processing average of 212 days pending prior to dismissal.

FY 2013 complaint totals can be found in their entirety at Appendix 1 of this report.

#### **e. Policy Description on Disciplinary Actions (5 C.F.R. § 724.302(a)(6))**

The FY 2013 Agency EEO policy addresses a variety of topics including the prohibition of discrimination in the workplace and a reminder to all employees that the agency will review any finding of discrimination and take appropriate disciplinary or corrective action. The EEO policy, as well as information on addressing harassment and reasonable accommodation, was discussed in the mandatory Successful Leaders program for all new Agency supervisors and in the new employee orientation sessions.

The FY 2013 EEO Policy can be found in its entirety at Appendix 3 of this report.

Additionally, EPA Order 3110.6B, *Adverse Actions*, EPA Order 3120.1B, *Conduct and Discipline*, EPA Order 3120.2, *Conduct and Discipline Senior Executive Service* and applicable collective bargaining agreements, provide guidance to managers about the type of disciplinary actions that may be taken, when appropriate, in response to a finding of discriminatory behavior or conduct. Such actions may range from informal corrective actions such as a written warning to more formal disciplinary actions such as a suspension without pay or removal.

EPA has an ongoing commitment to continue to include clear expectations EEO in performance standards for managers. EPA has maintained revised SES standards that not only focus on preventing discrimination in hiring activities and promoting merit systems principles, but also require senior leaders to be personally involved in leading and implementing EEO and civil rights initiatives consistent with applicable laws and executive orders. In addition, at the end of

every performance cycle, the Director of OCR, Performance Review Board members, and Executive Review Board members evaluate management self-assessments to ensure that the respective rating is an appropriate reflection of the accomplishments listed.

**f. No FEAR Act Training Plans (5 C.F.R. § 724.302 (a)(9))**

During FY 2013, we analyzed lessons learned from the EPA FY 2012 “*No FEAR Act Training Course*” that was hosted on the EPA eLearning site. The EPA eLearning site is an Internet-based training tool designed to support cross-functional training development needs for EPA employees. Based on input received from Agency employees regarding the 2012 training, we have contracted with Skillport to develop a more comprehensive training to include other areas such as discrimination based on gender stereotyping and the Genetic Information Nondiscrimination Act of 2008. We anticipate employees will be able to take the new training beginning Spring 2014. As with the 2012 NoFear Training, the eLearning site will be available for access 24 hours a day, 7 days a week, from work or home, allowing for maximum flexibility to meet the No FEAR Act training requirements. OCR, the Regional EEO Officers and the Headquarters Program Management Officers are planning to aggressively track and promote the successful completion of this training by individual offices, with a goal of reaching a 100% completion rate, Agency-wide, for the year.

**IV. ANALYSIS OF TRENDS, CAUSAL ANALYSIS AND PRACTICAL KNOWLEDGE GAINED THROUGH EXPERIENCE (5 C.F.R. § 724.302 (a)(7))**

At the conclusion of FY 2013, the bases of alleged discrimination most often raised were: (1) retaliation; (2) sex; and (3) age. The 59 EEO complaints filed at EPA in FY 2013 contained 29 allegations of retaliation, 26 allegations of sex discrimination, and 22 allegations of age discrimination. While retaliation and sex remain the top bases alleged in complaints filed for the second year in a row, these totals are not only significantly lower than in the previous year, they are the lowest in the previous 5 years worth of historical data. It should also be noted that retaliation and age are among the top three bases most frequently alleged in discrimination complaints throughout the entire Federal workforce.<sup>1</sup>

The data shows that the 0.31% of the Agency workforce of 17,002 employees that has filed complaints. This falls well below the last reported government-wide average of 0.53% of the workforce who filed complaints. At the time of reporting, government-wide totals beyond FY 2011 were not yet available.

The Agency saw a 22% decrease in the number of complaints filed from FY 2012 to FY 2013. We attribute this in part to EPA’s reinvigorated emphasis on the use of Alternative Dispute Resolution (ADR) to facilitate the ability of managers to hear about allegations of unlawful discrimination and to have an opportunity to resolve them at the lowest possible level. EPA managers and supervisors are required to participate, absent extenuating circumstances, as reiterated by the Administrator in her 2013 annual EEO Policy Statement. By certifying and training more EEO counselors and providing informational materials about the benefits of ADR in print and electronically, EPA’s ADR participation rate during the informal process increased

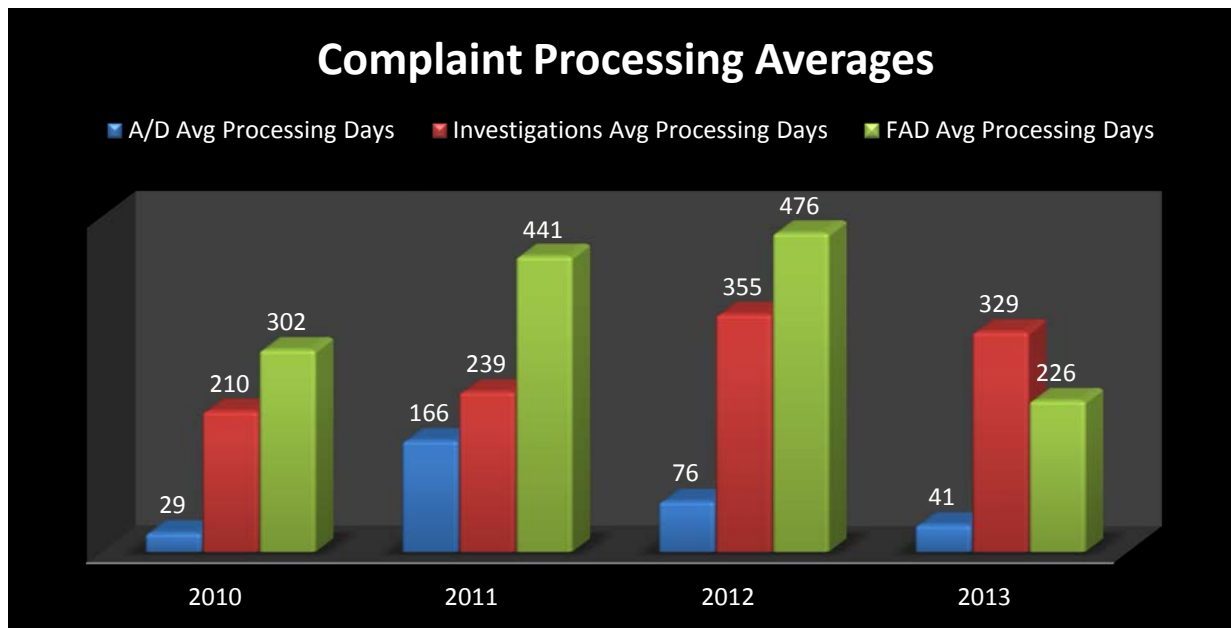
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<sup>1</sup> As reported in FY 2011 Report of the Federal Workforce. <http://www.eeoc.gov/federal/reports/fsp2011/index.cfm>

from 33.7% in FY 2012 to 49.41% in FY 2013. These efforts also increased EPA's rate of providing timely EEO counseling from 69.39% in FY 2012 to 92.11% in FY 2013. The Agency is currently developing an ADR program that would focus on increasing the number of cases in which ADR is offered in the formal complaint process which may increase our resolution rate. This program would continue to promote resolution at the lowest possible level by reengaging complainants and managers during the investigative stage of the complaint and attempt resolution prior to completing the investigation.

EPA continues to stress training as a method for ultimately reducing the number of Federal court judgments, awards, and formal complaints as managers and supervisors expand their knowledge of their responsibilities to promote equal employment opportunity.

EPA completed investigations for complaints pending during FY 2013 with an average processing time of 321 days, 31 days sooner than the Agency FY 2012 average of 352 days. The average age of FADs pending in FY 2013 was 261 days, almost half of our FY 2012 average of 533 days and the lowest the Agency has seen in the previous 4 years. As discussed in the FY 2012 NoFear Report, the Agency focused extensively on revamping and streamlining the investigative process and strategically alternating between the processing of older and newer matters to improve the proportion of cases adjudicated timely.



## **V. ADJUSTMENTS TO BUDGET (5 C.F.R. § 724.302(a)(2)(ii))**

During FY 2012, the Agency was required to reimburse the Judgment Fund \$500 for the payment of attorney's fees.

## **VI. ACTIONS PLANNED OR TAKEN TO IMPROVE COMPLAINT OR CIVIL RIGHTS PROGRAMS (5 C.F.R. § 724.302 (a)(7)(iv))**



In March 2011, Administrator Lisa P. Jackson appointed the Civil Rights Executive Committee, chaired by Deputy Administrator Bob Perciasepe, to recommend actions necessary for building a model civil rights program at the agency. After extensive review of the program, the Civil Rights Executive Committee submitted a final report, *Developing a Model Civil Rights Program for the Environmental Protection Agency*, to the Administrator outlining the agency's commitment to strengthening civil rights, equal employment opportunities, diversity in the workplace and revitalizing the agency's implementation of external civil rights laws. The Administrator approved the report and recommendations on April 13, 2012. On May 1, 2013, the Administrator approved the Agency Order which established the position of deputy civil rights official (DCRO) within each regional office and assistant administrator's office to serve as that office's primary point of accountability for assisting the OCR with effectively meeting the Agency's civil rights responsibilities and goals.

DCROs have broad oversight authority within their respective office or region for implementation of the civil rights program consistent with agency policy and directives, recognizing that offices or regions may need different staffing profiles for some functions. For example, Equal Employment Opportunity counselors are needed in every region, but at headquarters EEO counselors report to OCR rather than individual program offices. DCROs will identify and/or request adequate funding and resources for civil rights work and ensure their organizations have well-functioning policies, processes and management controls. Some of the activities that they will undertake include:

- Assuring that appropriate staff and expertise are available for their organizations to carry out an effective civil rights program including EEO counselors, alternate dispute resolution staff, special emphasis program managers and EEO officers.
- Developing and implementing the Equal Employment Opportunity Commission's Management Directive 715 Action Plans for their offices and regions that promote equal employment opportunity in a manner consistent with the agency's MD 715 Report, promote diversity and inclusion, and address other issues as required. Ensuring that the goals and objectives are communicated to subordinate management officials.
- Incorporating appropriate EEO and civil rights language into performance agreements as required for managers and as necessary for certain other positions.
- Facilitating informal EEO complaint resolution in conformance with Delegation 1-39, assuring the broad integration of well-functioning alternate dispute resolution approaches across the agency civil rights and employee relations activities and promoting the use of pre-complaint processes as a means of resolving EEO matters.

EPA's civil rights program has taken several other steps to strengthen EPA's commitment to civil rights, equal employment opportunity and diversity in the workplace:

- In FY 2013, OCR continued to make critical changes to its counseling program by offering monthly training teleconferences to all EEO Counselor's, organized and presented by OCR Employment Complaints Resolution Staff (ECRS) members to Agency EEO Officials. The timeliness and quality of EEO Counselor's Reports

continues to show marked improvement, and the utilization and success rate for ADR have all significantly improved.

- Within the EPA, every member of the Senior Executive Service continues to have a performance standard related to equal employment opportunity in the workplace. Senior managers must outline the specific initiatives and actions they have personally undertaken and the results or effectiveness of those actions. At the end of every performance cycle, the Director of the Office of Civil Rights, Performance Review Board members, and Executive Review Board members review these self-assessments to verify that the respective rating for the EEO performance standard is a reflection of the accomplishments listed.
- EPA has taken steps to improve the timeliness of EEO investigations. Of particular note is the new requirement for contractors to deliver investigations on schedule or receive reduced payment and/or terminate the contract.
- All EPA investigators and counselors continue to receive the required annual training and/or refresher training in accordance with MD 110.
- EPA works to comply with orders from administrative judges in a timely manner, and this is a factor that is included in the performance standard of the Assistant Director for the Office of Civil Rights, Employment Complaints Resolution Staff (ECRS). In addition, EPA has systems in place to ensure that the Agency initiates any monetary or other relief in a timely manner.
- In FY 2013, OCR's ECRS attended extensive FAD writing training as well as training related to writing acceptance and dismissal letters, analyzing hostile work environment claims and conducting thorough investigations.
- OCR also continues to post all No FEAR statistics on the OCR website on a quarterly basis.
- Members of OCR management make presentations during the monthly new employee orientations to ensure that all new employees are notified of the rights and remedies applicable to them under the employment discrimination and whistleblower protection laws.
- The Civil Rights Director and EEO Officials across the Agency participate in briefings, listening sessions, and brainstorming sessions to discuss EEO with managers, senior leaders and employees in order to identify specific action items that can continue to improve the Agency's EEO and civil rights program.

## APPENDIX 1

# Equal Employment Opportunity Data Posted Pursuant to the No Fear Act:

## EPA (and below)

*For 4th Quarter 2013 for period ending September 30, 2013*

Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					2013Thru09-30
	2008	2009	2010	2011	2012	
Number of Complaints Filed	79	77	70	64	76	59
Number of Complainants	72	71	63	61	75	56
Repeat Filers	9	8	9	3	2	3
Complaints by Basis	Comparative Data					
	Previous Fiscal Year Data					2013Thru09-30
	2008	2009	2010	2011	2012	
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>						
Race	42	33	39	25	39	21
Color	14	9	14	10	13	6
Religion	2	1	5	2	9	4
Reprisal	37	35	47	39	43	29
Sex	28	35	28	29	41	26
PDA	0	0	0	0	0	0
National Origin	10	6	14	10	13	12
Equal Pay Act	0	0	0	2	1	1
Age	28	37	28	21	35	22

Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					2013Thru09-30
	2008	2009	2010	2011	2012	
Disability	16	25	21	24	23	18
Genetics	0	0	0	0	0	0
Non-EEO	1	0	0	1	8	7
Complaints by Issue	Comparative Data					
	Previous Fiscal Year Data					2013Thru09-30
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	2008	2009	2010	2011	2012	
Appointment/Hire	0	0	2	1	5	5
Assignment of Duties	12	6	18	12	11	5
Awards	4	2	6	2	5	0
Conversion to Full-time	1	0	0	0	2	0
<b>Disciplinary Action</b>						
Demotion	1	0	0	0	0	0
Reprimand	3	3	3	3	2	3
Suspension	0	2	2	3	2	4
Removal	0	1	0	1	2	0
Other	0	0	3	2	4	2
Duty Hours	0	0	1	3	3	2
Evaluation Appraisal	17	9	14	11	21	9
Examination/Test	0	0	0	1	0	0
<b>Harassment</b>						
Non-Sexual	30	36	35	30	30	22

Complaints by Issue		Comparative Data					
		Previous Fiscal Year Data					2013Thru09-30
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>		2008	2009	2010	2011	2012	
Sexual		1	0	1	1	1	2
Medical Examination		0	0	0	0	0	0
Pay (Including Overtime)		5	2	3	4	4	1
Promotion/Non-Selection		28	24	24	18	25	9
Reassignment							
Denied		1	0	4	3	2	0
Directed		2	2	6	1	4	2
Reasonable Accommodation		3	6	2	8	7	8
Reinstatement		0	0	0	0	0	0
Retirement		0	1	0	0	1	0
Termination		4	7	4	9	5	4
Terms/Conditions of Employment		11	8	16	10	18	10
Time and Attendance		13	7	6	6	17	6
Training		6	7	6	4	10	2
Other		0	0	0	0	7	3
Processing Time	Comparative Data						
	Previous Fiscal Year Data					2013Thru09-30	
	2008	2009	2010	2011	2012		
Complaints pending during fiscal year							
Average number of days	205.84	217.32	214.40	236.82	352.31	320.77	

Complaints by Issue		Comparative Data					
		Previous Fiscal Year Data					2013Thru09-30
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>		2008	2009	2010	2011	2012	
in investigation							
Average number of days in final action	261.40	192.96	171.29	398.16	318.42		147.95
Complaint pending during fiscal year where hearing was requested							
Average number of days in investigation	215.97	211.79	204.77	242.18	347.38		325.31
Average number of days in final action	44.22	125.75	0	154.67	134.36		55.45
Complaint pending during fiscal year where hearing was not requested							
Average number of days in investigation	183.18	225.34	228.69	218.60	360.20		314.40
Average number of days in final action	354.48	224.59	366.40	564.18	533.17		261.00

Complaints Dismissed by Agency	Comparative Data											
	Previous Fiscal Year Data										2013Thru09-30	
	2008		2009		2010		2011		2012			
Total Complaints Dismissed by Agency	1		2		3		3		10		7	
Average days pending prior to dismissal	64		62		75		232		212		147	
Complaints Withdrawn by Complainants												
Total Complaints Withdrawn by Complainants	8		3		2		4		11		19	
Total Final Agency Actions Finding Discrimination	Comparative Data											
	Previous Fiscal Year Data										2013Thru09-30	
	2008		2009		2010		2011		2012			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		0		0		1		0	
Without Hearing	0	0	0	0	0	0	0	0	1	100	0	0
With Hearing	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2013Thru09-30	
	2008		2009		2010		2011		2012			
<i>Note: Complaints can be filed alleging multiple bases.The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%	#	%
	0		0		0		0		1		0	
Total Number Findings	0		0		0		0		1	100	0	
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	1	100	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings After Hearing	0		0		0		0		0		0	
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0



Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2013Thru09-30	
	2008		2009		2010		2011		2012			
<i>Note: Complaints can be filed alleging multiple bases.The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%	#	%
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	0		0		0		0		1		0	
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	1	100	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings of Discrimination	Comparative Data											

Rendered by Issue	Previous Fiscal Year Data										2013Thru09-30	
	2008		2009		2010		2011		2012			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		0		0		1		0	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	0	0	0	0	1	100	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2013Thru09-30	
	2008		2009		2010		2011		2012			
<i>Note: Complaints can be filed alleging multiple bases.The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%	#	%
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0	0	0	0	0	0	0
Findings After Hearing	0		0		0		0		0		0	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2013Thru09-30	
	2008		2009		2010		2011		2012			
<i>Note: Complaints can be filed alleging multiple bases.The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%	#	%
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	0		0		0		0		1		0	

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2013Thru09-30	
	2008		2009		2010		2011		2012			
<i>Note: Complaints can be filed alleging multiple bases.The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%	#	%
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	0	0	0	0	1	100	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2013Thru09-30	
	2008		2009		2010		2011		2012			
<i>Note: Complaints can be filed alleging multiple bases.The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%	#	%
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0	0	0	0	0	0	0

Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data					
	Previous Fiscal Year Data					2013Thru09- 30
	2008	2009	2010	2011	2012	
Total complaints from previous Fiscal Years	70	90	117	111	119	136
Total Complainants	65	82	102	89	99	123
<b>Number complaints pending</b>						
Investigation	1	1	0	6	2	2
ROI issued, pending Complainant's action	0	0	1	0	4	3
Hearing	3	9	12	31	36	53
Final Agency Action	18	43	35	20	15	24
Appeal with EEOC Office of Federal Operations	15	14	15	18	22	27
Complaint Investigations	Comparative Data					
	Previous Fiscal Year Data					2013Thru09- 30
	2008	2009	2010	2011	2012	
Pending Complaints Where Investigations Exceed Required Time Frames	14	7	5	20	14	18

## **APPENDIX 2**

### **Anti-Harassment Policy**

#### **MEMORANDUM**

**FROM:** Administrator Lisa P. Jackson

**TO:** All EPA Employees

As a matter of policy, harassment of any kind will not be tolerated at the U.S. Environmental Protection Agency. When harassment is directed at an individual because of a lawfully protected basis and is sufficiently severe or pervasive that it creates a hostile work environment or takes the form of a tangible employment action, it is unlawful. It is EPA policy to ensure that appropriate measures are implemented to prevent harassment, either sexual or nonsexual, in the workplace and to correct harassing conduct before it becomes severe or pervasive. EPA policy also strictly prohibits any retaliation against an employee who reports a concern about workplace harassment or assists in any inquiry about such a report.

For the purposes of this policy, unlawful harassment is defined as any unwelcome verbal or physical conduct based on race; color; sex, including pregnancy and gender identity/expression; national origin; religion; age; prior protected EEO activity; protected genetic information; sexual orientation or status as a parent when:

- a) the behavior can reasonably be considered to adversely affect the work environment; or
- b) an employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.

Sexual harassment can be either a form of harassment based on a person's sex that need not involve conduct of a sexual nature or harassment involving any unwelcome sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature when:

- a. submission to such conduct is made explicitly or implicitly a term or condition of an employee's job, pay or career;
- b. submission to or rejection of such conduct by an employee is used as a basis for career or employment decisions affecting that employee; or
- c. such conduct has the purpose or effect of unreasonably interfering with an employee's performance or creates an intimidating, hostile or offensive environment.

Sexual harassment need not involve members of the opposite sex and can be perpetrated by and against members of either sex.



Examples of workplace harassment include:

- Oral or written communications that contain offensive name calling, jokes, slurs, negative stereotyping, hostility or threats. This includes comments or jokes that are distasteful or targeted at individuals or members of the lawfully protected bases set forth above.
- Nonverbal conduct, such as staring, leering and giving inappropriate gifts.
- Physical conduct, such as assault or unwanted touching.
- Visual images, such as derogatory or offensive pictures, cartoons or drawings. Such prohibited images include those in hard copy or electronic form.

The EPA does not permit harassment by or against anyone in the workplace. This includes any employee, applicant for EPA employment, grantee, contractor, Senior Environmental Employment enrollee or Federal Advisory Committee Act member. Workplace harassment should be reported immediately by the affected person to a first-line supervisor, a higher-level supervisor or manager in her or his chain of command, the Office of Inspector General or Labor and Employee Relations staff, as appropriate. Supervisors, in consultation with their human resources or legal offices, must conduct prompt, thorough and impartial inquiries.

If necessary and to the extent possible, measures must be taken to safeguard the anonymity of employees who file complaints. If management, in consultation with legal counsel, determines that harassment has occurred, it must be corrected as soon as possible. Harassing conduct by EPA employees need not rise to the level of unlawful harassment for it to constitute misconduct subject to corrective or disciplinary action.

In addition, EPA employees or applicants for employment may also use the complaint process established by the Equal Employment Opportunity Commission to file a complaint of harassment based on race, color, sex, religion, national origin, age, disability, prior protected EEO activity and protected genetic information for individual redress. To invoke that process, EPA employees and applicants must contact an EEO counselor within 45 days of an alleged incident of harassment. Reporting harassment to a supervisor in accordance with the previous paragraph does not satisfy this requirement and does not invoke the EEOC's process. EPA employees or applicants for employment may also report harassment based on sexual orientation and status as a parent to the EPA Office of Civil Rights.

Should you have any questions or need additional information about this policy, please contact the EPA Office of Human Resources at (202) 564-4600 or the EPA Office of Civil Rights at (202) 564-7272.

## APPENDIX 3



### THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

DEC 18 2013

#### MEMORANDUM

**SUBJECT:** 2013 Equal Employment Opportunity Policy Statement

**FROM:** Gina McCarthy

A handwritten signature in blue ink, appearing to be "Gina McCarthy", is written over the name.

**TO:** All Employees

Fostering a diverse and inclusive work environment through equal employment is essential to our work and our service to the American people. I am proud to reaffirm the U.S. Environmental Protection Agency's commitment to equal employment opportunity in the workplace.

The EPA cannot and will not tolerate discrimination based on race; color; religion; sex, including pregnancy, sex stereotyping, gender identity or gender expression; national origin; sexual orientation; physical or mental disability; age; protected genetic information; status as a parent; marital status; political affiliation or retaliation based on previous EEO activity. The EPA also will not tolerate any type of harassment – either sexual or nonsexual – of any employee or applicant for employment. Employment decisions, including those related to hiring, training or awards, must be made in accordance with the merit-system principles contained in 5 U.S.C. § 2301.

I expect our management team to continue to provide first-class leadership in support of equal employment opportunities. I ask that EPA managers and employees take responsibility for treating each other with dignity and respect, reporting discriminatory conduct and preventing all types of discrimination, including harassment.

The EPA promotes the use of alternative-dispute-resolution methods to resolve workplace disputes or EEO complaints. Managers are reminded that their participation in agency-approved alternative-dispute-resolution efforts to resolve employee EEO complaints is required, absent extraordinary circumstances as determined by the Office of Civil Rights' director or designee.

Any employee, manager or applicant for employment who believes he or she has been subjected to discrimination has a right to seek redress within 45 calendar days of the alleged discriminatory event by contacting the EPA's Office of Civil Rights Employment complaints resolution staff at (202) 564-7272 or an EEO officer at the regional or laboratory level. The agency will review any finding of discrimination and, when necessary, take appropriate disciplinary or corrective action.

A professional, productive and inclusive workplace is essential to the EPA's mission to protect human health and the environment. Unlawful discrimination in the workplace, including retaliation and harassment, undermines our ability to achieve our agency's mission. I appreciate your shared commitment to equal opportunity at the EPA and look forward to continuing our work together.